

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCE

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MAY 14 2008

Patent Application No. 09/954,509

Confirmation No. 8458

Applicant: Omshehe et al.

Filed: September 14, 2001

TC/AU: 2141

Examiner: Kristie D. Shingles

Docket No.: 213306 (Client Reference No. 00,204US)

Customer No.: 23460

TRANSMITTAL OF
APPELLANT'S REPLY BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

In accordance with 37 CFR 41.41, appellant hereby submits Appellant's Reply Brief.

The items checked below are appropriate:

1. Status of Appellant

This application is on behalf of ☒ other than a small entity or ☐ a small entity.

2. Oral Hearing

☒ Appellant requests an oral hearing in accordance with 37 CFR 41.47.

A separate paper requesting oral hearing is attached.

☐ Appellant requested an oral hearing in accordance with 37 CFR 41.47 at the time appellant filed Appellant's Brief on Appeal.

Application No. 09/954,509

Reply Brief Transmittal

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- ☐ Appellants petition for a one-month extension of time under 37 CFR 1.136, the fee for which is \$ 0.00.
- ☒ Appellants believe that no extension of time is required. However, this conditional petition is being made to provide for the possibility that appellants have inadvertently overlooked the need for a petition and fee for extension of time.

Extension fee due with this request: \$ 0.00**4. Total Fee Due**

The total fee due is:

Request for Oral Hearing \$1,030.00
Extension Fee (if any) \$ 0.00

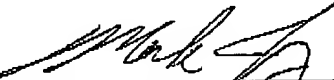
Total Fee Due: \$1,030.00**5. Fee Payment**

- ☐ Attached is a check in the sum of \$
- ☒ Charge Account No. 12-1216 the sum of \$1,030. A duplicate of this transmittal is attached unless filed via EFS.

6. Fee Deficiency

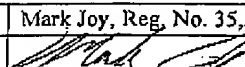
- ☒ If any additional fee is required in connection with this communication, charge Account No. 12-1216. A duplicate copy of this transmittal is attached.

Respectfully submitted,



Mark Joy, Reg. No. 35,562
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(312) 616-5600 (telephone)
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Date: May 14, 2008

MAILING/TRANSMISSION CERTIFICATE UNDER 37 CFR 1.8 OR 1.10			
I hereby certify that this document and all accompanying documents are, on the date indicated below, being <input type="checkbox"/> deposited with the U.S. Postal Service using "Express Mail" service in an envelope addressed in the same manner indicated on this document with Express Mail Label Number <input type="checkbox"/> deposited with the U.S. Postal Service with sufficient postage as first class mail in an envelope addressed in the same manner indicated on this document, or <input checked="" type="checkbox"/> facsimile transmitted to the U.S. Patent and Trademark Office at fax number: (571) 273-8300.			
Name (Print/Type)	Mark Joy, Reg. No. 35,562		
Signature		Date	May 14, 2008

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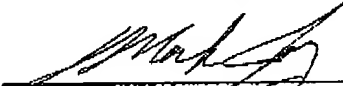
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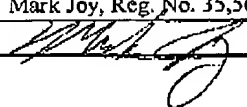
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Name (Print/Type)	Mark Joy, Reg. No. 35,562		
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APPELLANTS' REPLY UNDER 37 C.F.R. SECTION 41.41

Mail Stop Appeal Brief – Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This paper is filed in response to the Examiner's Answer mailed on March 14, 2008.
Appellants hereby respectfully request allowance of the pending claims for the reasons set forth in Appellants' Appeal Brief filed on December 17, 2007, and for the further reasons stated herein.

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Status of Claims

Claims 1-20 stand finally rejected, and these rejections are presently being appealed.

A complete listing of these claims appears in the Claims Appendix.

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Grounds of Rejection to be reviewed on Appeal

The grounds of rejection to be reviewed on appeal are the grounds stated in the Final Office Action mailed on May 18, 2006. In particular, Appellants appeal:

1. The rejection of claims 1, 2, 4-6, 8-12, 14 and 17-19 under 35 U.S.C. Section 102(e) as anticipated by Redding et al. U.S. Pat. 6,968,384 (the Redding '384 patent).

2. The rejection of claim 3 under 35 U.S.C. 103(a) as being obvious over the Redding '384 patent in view of Applicant's Admitted Prior Art (AAPA).

3. The rejection of claims 7, 13, 15, and 20 under 35 U.S.C. 103(a) as being obvious over the Redding '384 patent in view of Conte et al. U.S. Pat. 5,845,065 (the Conte '065 patent).

4. The rejection of claim 16 under 35 U.S.C. 103(a) as being obvious over the Redding '384 patent in view of the Conte '065 patent and Frison et al. U.S. Pat. 6,049,789 (the Frison '789 patent).

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Argument in Reply to Examiner's Answer

Appellants have carefully reviewed the Answer. The first portion of the Answer, beginning at page 3 and ending at page 8, is identical to the grounds recited in the Final Office Action from which the present appeal was taken. Appellants have addressed the Answer's grounds for rejection in the previously filed Appellants' Appeal Brief, and thus Appellants will not repeat these arguments, and instead incorporate each of these previously presented arguments by reference in their entirety.

Appellants seek reversal of the final rejection of presently pending claims 1-20 (provided in the Claims Appendix attached hereto) that are directed to a method (and computer-readable medium including computer-executable instructions) for administering a *session-based* concurrent user licensing agreement on a manufacturing/process control information portal wherein a single logon persists across multiple distinct resources to which a *plant information portal server* (see, FIG. 1, portal server 10) provides access.

The primary issue with regard to this Appeal is whether Redding indeed discloses a method/system that includes each and every element of Appellants' claimed invention. The previous Office actions and the Answer have based the rejection of claim 1 in view of Redding on an unreasonably broad reading of several elements of claim 1. In some cases, the Answer explicitly disregards recited claim elements (e.g., plant information portal server, list of session-based concurrent license users). To demonstrate the degree to which the Answer disregards the normal meaning of recited claim terms (grounded at least in part by Appellants' disclosed embodiments), Appellants ask the Board to consider attempting to show "infringement" by Redding's system of the method recited in claim 1. A finding of "infringement" is simply unimaginable. In view of the unreasonable breadth assigned to the pending claims by the Answer, Appellants submit that the present rejections cannot stand.

The Answer expresses an inability to understand the meaning of terms such as "portal server" and "plant information." Appellants submit that a clear meaning can be determined for such terms, by one of ordinary skill in the art, from the substantial discussion of those terms in both the background of the invention and the description of preferred embodiments (e.g., portal server 10 in FIG. 1).

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Furthermore, Appellants respectfully submit that Redding does not disclose or even remotely suggest the recited "plant information portal server" that provides access to manufacturing/process control information resources.

Also, Redding *clearly* does not disclose the "adding the identified user to a *list of session-based concurrent license users*" step. Redding discloses enforcing a multi-user license for a software program in on-line ("network authorization" described from col. 8, line 33 to col. 9, line 54) and off-line ("commuter authorization" described from col. 9, line 55 to col. 14, line 2) forms. Redding, in fact, merely discloses license *counters* to track allocated user licenses.

Finally, Redding does not disclose the "first confirming" step recited in claim 1. The first confirming step initially checks to see whether the user currently has a session-based concurrent license. However, the Redding patent discloses two different licensing modes -- neither of which involves *checking* for whether a *session-based* concurrent user license has already been allocated to a requesting user.

For at least these reasons, Appellants seek reversal of the final rejection of presently pending claims 1-20 (provided in the Claims Appendix attached hereto) for the further reasons set forth herein below. The Appellants' argument herein below addresses the points (A-I) raised in section 10 ("Response to Argument") of the Answer.

(A) Whether Redding Discloses A "Plant Information Portal Server"

The Answer admits that Redding does not disclose a "plant information portal server." The Answer does not even assert that Redding discloses any type of "portal server." Appellants disclose a portal server and browser clients in a process control (plant) environment. See, e.g., paragraphs [0028] and [0031]). In contrast, Redding discloses a networked *license manager service* that tracks a current *number* of users of particular software applications. The software applications are already present on the users' computers and the license server merely provides authorization codes to enable their operation. Redding does not even mention "browsers" associated with the clients (see, Redding, col. 5, lines 50-65). Nor does Redding disclose the license server 14 providing "gateway" access to a collection of networked resources (a basic capability of portal servers) such as "Web pages." See, Redding, col. 5, line 66 to col. 6, line 26.

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The Redding servers (license servers 14) cannot reasonably be construed as "portal servers" and more specifically "plant information portal servers" when (1) Appellants' disclosure in the written description and drawings and (2) the knowledge of one of ordinary skill in the art are considered. Section 10(A) of the Answer disregards both in reaching its present position.

Thus, whether the rejection of claim 1 is proper rests upon the Answer's basic premise that Appellants' recited "plant information portal server" can be completely ignored during the validity assessment. The Answer, in the first paragraph under section "A" on page 9, suggests that "plant information portal server" does not hold any patentable weight. Appellants devoted considerable disclosure in the present application to describing a portal server that is configured to provide a gateway to plant information provided by a connected industrial process control system and associated plant information databases. See, e.g., Appellants' application Background, paragraphs [0008]-[0010] and FIG. 1, paragraph [0031]. This functionality of the recited "plant information portal server" cannot be ignored.

As one will likely find with any computer-related invention, one starts with a computer system and builds physical and logical linkages and functional capabilities that define a unique system or a method performed by such system. This is the case with the presently disclosed and claimed "plant information portal server" and its method of managing concurrent session-based user licenses to plant information resources. See, Appellants' application Summary of the Invention (paragraph [0011]) and the licensed access scheme to particular types of plant information resources such as InTouch nodes in paragraph [0028]. The disclosed/claimed "plant information portal server" does indeed include distinct functionality regarding its linkages and components that provide gateway access to plant information resources requested by browser clients. The Answer is no more entitled to disregard defined elements than Appellants, in view of their disclosure and previous argument, would be entitled to do so in the context of applying their claim to a potentially infringing "portal server." Redding does not disclose a server that could even remotely be considered a "portal server." Thus, the Answer's premise for finding that Redding discloses the recited "plant information portal server" element (i.e., the element can be ignored entirely) of claim 1 is fundamentally flawed, and the rejection cannot stand.

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With regard to the second paragraph of Section 10 "A" on page 9, Appellants reiterate that none of the license servers 14 can be reasonably construed as "portal servers." The Answer refers to the leader server having a "portal" feature, but the leader license server is neither a gateway to networked (Internet) resources, nor a server of requests from client browsers. The lead license server 14 is merely an enforcer of a multi-user license through maintained counters. Finally, the last sentence of the second paragraph of section "A" at the top of page 10, is outright false. The ability to assign a "commuter" license for use by a disconnected client is a highlighted capability of Redding's disclosed license manager.

(B) Whether Redding discloses "adding the identified source to a list of session-based concurrent license users to which a session-based concurrent license is assigned"

Redding discloses a license management scheme where license managers only keep a counter values. They do not maintain *lists of users to which a session-based concurrent user license is assigned*. The Answer identifies multiple sections of Redding – each one unequivocally referring to either a counter or a flag. The only list of networked entities maintained by the Redding license servers is the one containing the list of co-license managers (leader priority list 46). The Answer is unreasonable broadens the scope of the recited "adding" step by equating a counter value to Appellants' recited *list of users*.

With regard to Appellants' disclosed embodiment, adding a source (requesting user) to a list of concurrent users of session-based licenses is the basis upon which the disclosed/claimed portal server is able to manage a "session-based" user license across multiple plant information resources to which the claimed portal server provides access. A mere "counter value" would not enable the portal server to determine (during the confirming step) whether a requesting user had previously received a session-based license on the portal server site. The Answer's assertion that changing a value of a counter is the same as adding a user to a list of concurrent license users is without merit. In the event that the rejection of claim 1 is not reversed, Appellants request identification of disclosure in Redding showing the step of *adding an identified source* (of an access request) to a *list of session-based concurrent license users* to which a concurrent license is *assigned*.

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(C) Whether Redding discloses the "first confirming" step for determining whether the user currently has a session-based concurrent license

The "concurrent license" recited in the "first confirming" step of claim 1 refers to an instance of a set of "session-based concurrent licenses" managed by the portal server. Appellants previously noted in their Appeal Brief that the Redding "commuter" license, which lasts for example for 30 days, persists far beyond a "user session" and therefore is not a "session-based" concurrent license as set forth in claim 1. The commuter license is the only type of license checked by the Redding license manager. See, col. 10, lines 30 – 62. Therefore Appellants' recited "first confirming" step is not disclosed in Redding. Section 10 "C" of the Answer disregards this aspect of Appellants' argument in the Appeal Brief.

Appellants seek reversal of the rejection of independent claim 17, which includes elements tracking the steps recited for claim 1, for at least the reasons set forth herein above regarding claim 1.

(D) Whether Redding discloses the "session-based concurrent license" explicitly recited in claims 4 and 18 and the "comparing" explicitly recited in claim 5

The Answer again disregards Appellants' argument regarding the non-session nature of the "commuter" license discussed in column 10 of Redding. Claim 4, in contrast to claim 1, explicitly recites "session-based concurrent licenses" (implied, but not explicitly recited in claim 1's "first confirming" step). The portion of the disclosure in Redding upon which the Office Action relies (col. 10, lines 42-51) describes the non-session-based license scheme. For at least this reason, the rejection of claim 4 should be reversed. The Answer did not attempt to, but could not in any event, justify its assertion that the Redding "commuter" license is a "session-based concurrent license."

Applicants reiterate their earlier expressed argument that Redding does not disclose any listing of users to which a concurrent license has been assigned. Therefore, Redding could not disclose the recited "comparing the identified source of the request with the list of session-based concurrent license users."

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(E) Whether Redding discloses the recited combination of steps that amount to an indirect license management scheme

The Answer misconstrued Appellants' argument regarding the rejection of claim 9. Appellants sought to aid the understanding of the claim elements by describing the resulting effect. Redding clearly does not disclose the "entity" which bases a determination of whether to "grant access" to a requested resource upon receiving the "indication" (a requested session-based concurrent license was granted by the license manager). The claimed "entity" is thus able to control how to handle a received response from the license manager rather than rely upon the requestor to handle the license manager's response. This aspect of the claimed invention is described, by way of example, at page 13, line 22 to page 14, line 3. Nowhere does Redding disclose this claimed intermediate "entity."

(F) Whether Redding discloses the recited "maintaining access via the portal server to a set of resources, wherein the invoking step is implemented...on an individual resource basis"

The Answer misconstrues Appellants' argument regarding the rejection of claim 12. Appellants' sought to provide a concrete example of how the additional method elements inter-related with the basic steps set forth in claim 1 – in particular, to give an example of how individual resources are separately managed, but share a single set of concurrent session-based user licenses (the session-based concurrent licenses being further defined by the further recited elements of the "invoking" step). Appellants disclose a license manager invocation scheme wherein a call is initiated to a license manager in response to execution of an embedded script line within an accessed Web page (see, e.g., page 8, lines 8-21) corresponding to a resource of interest provided via the plant information portal server. The key feature that Redding lacks relates to the interrelationship between the step recited in claim 12 and the previously recited "invoking" step.

Redding, in contrast to the invention recited in claim 12, discloses a license management scheme wherein each software application (resource) has its own distinct license counter. While a single license manager controls multiple license counters, there is no sharing of a single license counter between distinct software applications in Redding's disclosed license management arrangement.

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(G) Whether the recited invoking via a Web page access is obvious over Redding in view of AAPA

The Answer states that Appellants are arguing non-recited elements of claim 3. Appellants submit that their arguments do indeed relate to the claim elements. In particular, the argument relates to the "session-based" limitation assigned to the allocated user license which causes the allocated license to persist beyond a first Web page that resulted in assigning the license to a user. Appellants therefore reiterate that the prior art does not teach or suggest that once a user leaves a particular resource within a portal site, the previously allocated session-based concurrent user license persists to other protected resources accessed via the plant information portal server. Finally, Appellants reiterate that Redding does not disclose a "portal server."

(H) Whether claims 7, 13, 15, and 20 are obvious over Redding in view of Conte

Appellants unequivocally assert that Redding neither discloses nor suggests the recited "session-based concurrent licenses." While one could consider the "network authorization" mode to be capable of providing a "session-based" license for a single software application, the license does not "persist across multiple distinct resources to which access is provided via a plant information portal server" and therefore would not meet a functional requirements of the session-based concurrent license administered by the claimed plant information portal server. See, Preamble of claim 1. For the reasons previously stated by Appellants' Brief claims 7, 13, 15 and 20 are patentable over Redding in view of Conte.

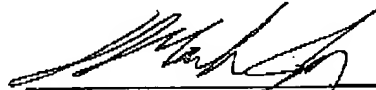
Application No. 09/954,509

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Conclusion

In summary of the above, the cited Redding patent neither discloses nor suggests elements recited in Appellants' presently pending independent claims. In particular, Redding does not disclose a *plant information portal server* nor does Redding disclose a *list of session-based concurrent license users* to which a session-based concurrent license is assigned. The list of license users enables the system to persist the concurrent license across multiple distinct resources to which access is provided via the plant information portal server. Redding only discloses license counters which are not functionally equal to the provided lists, and Redding does not persist an assigned license across multiple plant information portal resources. Appellants therefore request reversal of the final rejection of claims 1-20.

Respectfully submitted,



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Date: May 14, 2008

Application No. 09/954,509

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Claims Appendix

This listing of claims replaces all prior versions, and listings, of claims in the application.

1. (Previously presented) A method for administering a session-based concurrent user licensing agreement on a manufacturing/process control information portal such that a single logon during a session persists across multiple distinct resources to which access is provided via a plant information portal server, the method comprising the steps:

receiving, by the plant information portal server, an access request for a resource for which a license is required;

invoking, based upon a code within a sequence of commands associated with the requested resource, a license manager associated with restricted resources associated with the plant information portal server, the license manager performing, for the purpose of granting, if needed, one of potentially multiple available session-based concurrent licenses, a set of further steps including:

first confirming that an identified source associated with the request needs a concurrent license;

second confirming that a concurrent license is available to assign to the identified source; and

adding the identified source to a list of session-based concurrent license users to which a session-based concurrent license is assigned.

2. (Previously presented) The method of claim 1 wherein the second confirming step is based upon a maximum number of allowed concurrently licensed sessions under an established concurrent license agreement maintained by the license manager.

3. (Previously presented) The method of claim 1 wherein the invoking step is performed in response to an attempt by a particular identified user-session to access portal resources via a web page provided by the portal server.

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4. (Previously presented) The method of claim 1 wherein the first confirming step comprises determining that the identified source does not currently possess one of the session-based concurrent licenses.

5. (Previously presented) The method of claim 4 wherein the first confirming step is carried out by comparing the identified source of the request with the list of session-based concurrent license users.

6. (Previously presented) The method of claim 1 further comprising the steps of:

allocating a session-based concurrent license to the identified source; and

adjusting a concurrent license counter value in accordance with the assigning step.

7. (Previously presented) The method of claim 1 wherein an allocated session-based concurrent license grant, as a result of the adding step, persists across requests from the identified source spanning multiple distinct resources accessed via the plant information portal server.

8. (Previously presented) The method of claim 1 further comprising the license manager returning an indication of whether a session-based concurrent license has been granted to the identified source of the request.

9. (Previously presented) The method of claim 8 further comprising the steps of:

receiving, by an entity that initiated a license request call to the license manager during the invoking step, the indication; and

determining, based upon the received indication, whether to grant the access request.

10. (Previously presented) The method of claim 1 wherein the sequence of commands include a conditional test for invoking the license manager.

11. (Previously presented) The method of claim 10 wherein the conditional test relates to an origin of the access request.

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12. (Previously presented) The method of claim 1 further comprising, maintaining access via the portal server to a set of resources, wherein the invoking step is implemented with regard to the set of resources on an individual resource basis.

13. (Previously presented) The method of claim 1 further comprising persisting a previous session-based concurrent license grant when a requestor exits a resource associated with an initial grant of the session-based concurrent license.

14. (Previously presented) The method of claim 1 wherein the code within a sequence of commands associated with the requested resource comprises a function call for invoking a service with which the license manager is associated.

15. (Previously presented) The method of claim 1 further comprising maintaining a historical record of concurrent license usage information.

16. (Previously presented) The method of claim 15 further comprising displaying the concurrent license usage information via a query results interface.

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17. (Previously presented) Computer-readable media including computer executable instructions for facilitating administering a session-based concurrent user licensing agreement on a manufacturing/process control information portal such that a single logon during a session persists across multiple distinct resources to which access is provided via a plant information portal server, the computer executable instructions facilitating performing the steps of:

receiving, by the plant information portal server, an access request for a resource for which a license is required;

invoking, based upon a code within a sequence of commands associated with the requested resource, a license manager associated with restricted resources associated with the plant information portal server, the license manager performing, for the purpose of granting, if needed, one of potentially multiple available session-based concurrent licenses, a set of further steps including:

first confirming that an identified source associated with the request needs a concurrent license;

second confirming that a concurrent license is available to assign to the identified source; and

adding the identified source to a list of session-based concurrent license users to which a session-based concurrent license is assigned.

18. (Previously presented) The computer-readable medium of claim 17 wherein the first confirming step comprises determining that the identified source does not currently possess one of the session-based concurrent licenses.

19. (Previously presented) The computer-readable medium of claim 17 further comprising computer-executable instructions facilitating the license manager returning an indication of whether a session-based concurrent license has been granted to the identified source of the request.

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20. (Previously presented) The computer-readable medium of claim 17 further comprising computer-executable instructions facilitating maintaining a historical record of concurrent license usage information.

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Evidence Appendix

Not Applicable

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Related Proceedings Appendix

Not Applicable